

APPENDIX 7-D

AGREEMENT WITH HUNTINGTON CITY

AGREEMENT

THIS AGREEMENT entered into this 27th day of January, 1982, by and between Co-op Mining Company, a Utah partnership, C.O.P., INC., a Utah corporation, herein-after jointly referred to as "Co-op", and Huntington City, a municipal corporation, hereinafter called "City".

WITNESSETH:

THAT WHEREAS, Co-op is undertaking to develop and put into operation a coal mine in Big Bear Creek Canyon, in Emery County, Utah;

AND WHEREAS, City has received in the past and is now receiving a significant portion of its culinary water supply from a spring in Big Bear Creek Canyon in the general proximity of the proposed mining operation;

AND WHEREAS, the parties to this Agreement wish to cooperate with each other so as to assure that Co-op activities will not in any manner result in a loss or diminution of the water supply available to the City from the Spring, the parties do hereby AGREE and COVENANT between themselves as follows:

1. That, at the option of City, representatives of City and the Co-op will make inspections underground in the old Bear Canyon Mine and any other mine operated in Bear Canyon by Co-op, to check for water.

2. That the City will maintain a flow meter at the Spring site and shall take measurements from the meter on a continuing basis so that any interference with the water supply or diminution in the flow can be readily determined; and the flow figures as measured shall be made available to Co-op.

3. That in the event that the quality of water at the Big Bear Creek Spring site decreases below the standards set by the Utah State Board of Health for culinary water, or in the event that the quantity of water at the Big Bear Spring decreases in flow —25%— below the flow for the month immediately preceding, in any 30-day period; or 50 per cent below the average flow for the preceding 180 days in any 180-day period and such decrease cannot reasonably be accounted for as being a result of a lack of precipitation or other causes unrelated to Co-op's mining activities, then Co-op shall in accordance with this Agreement undertake such action as may be necessary to obtain water from some other source, and place said water into the culinary water system of City in such quantity and quality as would replenish the flow and quality that has been lost with the same quantity of water, the quality of which passes the standards of the

Utah State Board of Health for culinary water. Co-op agrees to use all reasonable diligence to take the required action or make the required replacement of a permanent acceptable nature as rapidly as feasible, not to exceed one year, unless a greater time is required by law, and further agrees to maintain such temporary measures until permanent measures are completed, at Co-op's sole expense. In the event that water treatment is required to bring the water obtained by Co-op up to Utah State standards for culinary water, Co-op further agrees to pay the proportionate share of the cost for treatment of said water as long as the interruption continues. In the event it is later determined that such decrease in the flow or quality of water is not a result of Co-op's mining activities, City agrees to reimburse Co-op for its reasonable and necessary expenses incurred pursuant to this paragraph. Co-op further agrees that if said mining operations diminish or interfere with the flow of or quality of water from the above Spring to the extent that mechanical water treatment plant is necessary, said Co-op shall pay a percentage of the plant cost related to said plant, proportional to the water needing treatment as a result of the diminution in quality or quantity of the Big Bear Springs, compared to the total water being treated by the City.

4. The parties further agree that the figures of 25% and 50 per cent relative to a decrease in flow of the Big Bear Creek Spring cited in paragraph 3 above as the trigger for Co-op's obligation to replace said diminution of flow may be altered from time to time by mutual agreement of the parties after a period of three years, after which time the parties will have sufficient spring flow data to more accurately establish that point at which the diminution of flow at the Spring site is likely to have been caused by the Co-op's mining operations.

5. In the event that there is a good faith dispute between the parties hereto whether or not Co-op's mining activities are the cause of a diminished flow or quality in Big Bear Creek Spring, the parties shall cooperate in taking immediate corrective measures reasonably necessary to restore said flow or quality of water. Each party shall bear one-half of the cost thereof, provided that if it can later be shown that said mining activities were not responsible for said diminution in flow or quality, City shall reimburse Co-op within a reasonable time from such showing for Co-op's costs already paid pursuant to this paragraph and Co-op shall not be obligated to pay any additional costs of the corrective measures not yet paid at the time of such showing. Further, if it can be later shown that said mining activities were responsible for said diminution in flow or quality, Co-op shall reimburse City within a reason-

able time for City's costs already paid pursuant to this Agreement.

6. In the event of good faith dispute between the parties as to the cause of any diminution in flow or quality of said Spring, the parties agree to appoint an arbitration committee and to be bound by the decision of said committee. This committee shall consist of five members: one Co-op representative, one City representative, and three representatives chosen by the other two members. The arbitration committee shall immediately meet and within 30 days make a preliminary decision as to the cause of any diminution in flow or quality of said Spring which preliminary decision shall bind the parties until the committee has had time to make a full investigation and reach a final decision. Nothing in this Agreement shall be construed as depriving either party of a right of action against any other non-parties including any insurance company issuing insurance pursuant to paragraph 9 hereof.

7. In the event any other mining operation or other activity of any other person or entity is proposed or planned in the area which may affect the flow of the Big Bear Creek Spring, City will require such person or entity to sign an agreement similar to this Agreement, binding such other person or entity to bear responsibility for any adverse effect such other person's or entity's activities may have upon the flow or quality of said Spring. In the event any diminution in the flow or quality of the Spring may be attributable to the activities of any person or entity other than Co-op, Co-op shall have the right to establish the same to City's reasonable satisfaction and thereby shall be entitled to reimbursement by City within a reasonable time from such establishment for reasonable costs incurred by Co-op for corrective action required under this Agreement to the extent it is established that such other person or entity is responsible for the diminished flow or quality. In that event City agrees to look to such other person or entity for such corrective action as it deems necessary.

8. This Agreement shall terminate and Co-op shall have no further obligation hereunder with respect to any diminution of flow of Big Bear Creek Spring, one year after the final termination of Co-op's or its successors in interests' mining activity in Bear Canyon.

9. In order to assure performance on its part of the covenants of this Agreement, Co-op agrees to insure the City in an amount not less than Three Hundred Thousand (\$300,000) Dollars with a company acceptable to City which insurance policy may be the same policy as is required by Section 40-10-10(6) Utah Code Annotated.

10. In the event legal action is brought to enforce the terms of this Agreement, the losing party in such action agrees to pay all costs thereof, including the reasonable attorney's fees of the prevailing party.

11. This Agreement shall cover the proposed mining operation on the Six Hundred Eighty (680) acres covered by and described in Cause No. ACT - 015-025, before the Utah Board of Oil, Gas and Mining, Department of Natural Resources.

12. As a condition to entering into the foregoing Agreement, the City agrees that it will withdraw its protest in Cause No. ACT - 015-025 before the Board of Oil, Gas and Mining, Department of Natural Resources of the State of Utah, and also it agrees that it will not protest the proposed mining operation on the the Six Hundred Eighty (680) acres as heretofore filed as a mining plan with the Board of Oil, Gas and Mining, Department of Natural Resources of the State of Utah, or protest the issuance by Emery County of any necessary building permits or approvals for Co-op's mining operations in Bear Canyon.

13. The City hereby specifically reserves its rights to protest any and all other legal remedies on all other mining plans or proposals on land not included in the acreage covered by this Agreement.

14. Co-op agrees that the transfer or assignment of the premises affecting said Spring or this Agreement shall not release Co-op from any obligations in this Agreement unless Huntington City has in writing consented to said release, which consent shall not be unreasonably withheld.

15. The parties shall not assign their obligations or rights under this Agreement without the mutual consent of each other.

16. It is agreed by the parties that this Agreement applies to and binds the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this Agreement have here unto affixed their signatures, the day and year first above written.

CO-OP MINING COMPANY

By *D. J. Peterson*

ATTEST:

Laura Kingston
Secretary

C.O.P., INC.

By *D. J. Peterson*

Its President

ATTEST:

Robt. H. Chang
City Recorder

HUNTINGTON CITY

By *Robert H. Chang*

Its Mayor